

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 109 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KABHAIBHAI DAHYABHAI PARMAR

Versus

BHIKHABHAI DAUDBHAI FAKIR

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Appearance:

MR NALIN K THAKKER for Petitioner

MR PV NANAVATI for Respondent No. 1, 3

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/04/96

ORAL JUDGEMENT

1. The petitioner-claimant is aggrieved by the order passed by the MACT, Kheda at Nadiad on Misc.Civil Application No.445/89 which was filed by the claimant for condonation of delay caused in filing petition for compensation. Such application is dismissed by the MACT by its impugned judgment and hence the present CRA is filed.

2. It may be noted that the accident has taken place on 22.3.85. The claim petition therefore could have been filed under Motor Vehicles Act, 1939 as at that time the Motor Vehicles Act, 1988 has not come into force. The Motor Vehicle Act came into force on 1st July, 1989 while the petition is filed on May 9, 1989, i.e. prior to coming into force the Motor Vehicle Act, 1988. The tribunal has taken a view that under the new Act period of limitation is prescribed and it was to be filed within six months from the date of occurrence of accident and further power tribunal to condone delay for a period of six months thereafter. Since the application was filed much beyond said period tribunal has dismissed the application.

3. The tribunal has unfortunately failed to appreciate that the accident took place prior to coming into force of the Act and the petition has also come to be filed prior to coming into force of the Act 1988. Such petition was therefore governed by the provisions of Motor Vehicles Act, 1988. In the case of VINOD GURDAS RAIKAR vs NATIONAL INSURANCE COMPANY LTD reported in 81 ACJ 1060 the Apex Court has observed as under:

"It is true that the appellant earlier could file an application even more than six months after the expiry of period of limitation, but can this be treated to be a right which the applicant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act, subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same can not be held to govern the case, otherwise, the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it impractical for him to avail of the remedy"

4. In view of the aforesaid observations of the Apex Court the judgment and order of the Tribunal can not

stand to any judicial scrutiny and it shall have to be quashed and set aside with direction to the tribunal to decide the question of condoning delay in accordance with law under the provisions of the Motor Vehicle Act, 1939 and it shall also keep in mind the fact that the new Act of 1988 by subsequent amendment there is no period of limitation now for filing claim petition. Rule is made absolute accordingly. No costs.

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